

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Sheryl L. Szeinbach,	:	
	:	
Plaintiff	:	Civil Action 2:08-cv-822
	:	
v.	:	
	:	
The Ohio State University,	:	Magistrate Judge Abel
	:	
Defendant	:	

ORDER

This matter is before the Court on plaintiff Sheryl L. Szeinbach's November 1, 2012 motion for leave to conduct discovery (doc. 192).

Arguments of the Parties. Szeinbach requests leave to conduct limited discovery related to recently discovered evidence that she maintains supports her arguments that defendant's asserted legitimate, nondiscriminatory reasons were pretextual. Plaintiff seeks discovery regarding Professor Terry S. Elton, a professor in the OSU College of Pharmacy, whose article, published in the journal of the American Physiological Society, was recently retracted on the basis that it contained improperly prepared data. Plaintiff argues that OSU never scrutinized Elton's research and publications under its research misconduct policies in the manner that OSU investigated allegations regarding her publications.

Defendant argues that the deadline for conducting discovery in this case was March 31, 2010 and that the Court's September 21, 2012 Order did not reopen discovery. OSU maintains that plaintiff fails to show good cause for reopening discovery. The misconduct investigation concerning Dr. Szeinbach's publications concluded in May 2008. Neither the Dean of the College of Pharmacy nor the OSU Office of Research Compliance had any knowledge of any potential research misconduct involving Dr. Elton during the time periods relevant to this case. During the discovery period, plaintiff never served any discovery requests concerning Dr. Elton or regarding research misconduct investigations by OSU after 2009. Defendant argues that the relevant period for comparators ended in 2009 at the latest. Any investigation undertaken after May 2010 would have been conducted under a different policy than the policy in effect at the time of the investigation of plaintiff's publications.

Discussion. Plaintiff Sheryl L. Szeinbach's November 1, 2012 motion for leave to conduct discovery (doc. 192) is DENIED. Dr. Elton cannot be considered a comparator to plaintiff. During the time period relevant to this case, Dr. Elton was not suspected of any potential research misconduct. Furthermore, at the time any potential misconduct on the part of Dr. Elton was discovered, the research misconduct policy that had been in place when the investigation of Dr. Szeinbach began was no longer applicable. Discovery in this case has been over since 2010, and plaintiff has not demonstrated good cause for reopening discovery at this late date.

s/Mark R. Abel
United States Magistrate Judge